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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 203

H. D. RYAN AND L. G. HOWARD, TRADING AS KEYSTONE TRANSFER COMPANY,

Petitioners,

vs.

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

HAROLD D. SHERTZ,
PAUL F. BARNES,
ROBBIN B. WOLF,
W. DAVIS GRAHAM,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

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vs.

THE PENNSYLVANIA PUBLIC UTILITY COMMISSION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, H. D. Ryan and L. G. Howard, trading as Keystone Transfer Company, respectfully prays that a Writ of Certiorari issue herein to review a certain final decision of the Superior Court of the State of Pennsylvania. The Supreme Court of Pennsylvania, being the highest court of appeal in said State, refused to allow a petition for appeal. The decision of the Superior Court was rendered on January 30, 1941. The order of the Supreme Court of Pennsylvania refusing an appeal to that court was filed March 24, 1941 (R. 504).

Opinions Below.

The Opinion of the Superior Court of Pennsylvania is reported in 143 Pennsylvania Superior Court, Page 517, and 17 Atlantic Report 2nd Series, Page 637, and also appears in the record of the present proceedings (R. 489).

The Opinion filed January 30, 1941, affirms the Final Order entered by the Public Utility Commission of the State of Pennsylvania; the adjudication and the opinion of said commission appear in the record of the present proceedings (R. 448).

Statement of the Case.

Since 1920 the petitioners have been engaged in interstate commerce as a common carrier by motor vehicle. The part of their operations involved in the present case is the transportation of goods between Pittsburgh, Pennsylvania, and Washington, Pennsylvania, and between Pittsburgh, Pennsylvania, and Uniontown, Pennsylvania, all via Wheeling, West Virginia. This represents only a small part of the total freight hauled by petitioners, the greater portion of the freight hauled in the same trucks via Wheeling, West Virginia, being that moving between points in different States.

The motor trucks loaded in Pittsburgh, Pennsylvania, go straight through to Wheeling, West Virginia, without pickup or delivery en route. At Wheeling, West Virginia, all freight consigned to Uniontown, Pennsylvania, Washington, Pennsylvania, and points in Ohio and West Virginia is unloaded onto petitioners' platform, assorted, and reloaded at Wheeling, West Virginia, on other trucks for delivery to those points. The same is true in the reverse direction.

The Pennsylvania Public Utility Commission held that the hauling of goods between points in Pennsylvania via Wheeling, West Virginia, was a subterfuge to avoid the

jurisdiction of the Commission. The Commission thereupon entered a final order to cease and desist and assessed a fine on your petitioners in the sum of Fifteen Hundred ($1,500.00) Dollars. This final order was affirmed by the Superior Court of Pennsylvania.

Your petitioners carry on their motor vehicle operations set forth above, under and by virtue of the Order of the Interstate Commerce Commission, which appears in the record of the present proceedings as Respondent's Exhibit No. L (R. 373). Said order provides *inter alia* for transportation between Pennsylvania points, including the points above mentioned, via Wheeling, West Virginia.

The transportation of goods between Pittsburgh, Pennsylvania, and Uniontown and Washington, Pennsylvania, via Wheeling, West Virginia, is a reasonable and necessary incident to the interstate operations by your petitioners.

Jurisdiction.

The decision of the Superior Court of Pennsylvania was entered January 30, 1941. A petition was filed for leave to appeal to the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania refused that petition on March 24, 1941 (R. 504). The record is presently in the possession of the Superior Court of Pennsylvania, Eastern District, at Philadelphia, Pennsylvania.

The jurisdiction of this Court is invoked under Section 237 (a) and (b) of the Judicial Code as amended; 28 U. S. C. A. Section 344.

Statutes Involved.

The Public Utility Law of Pennsylvania, Act of May 28, 1937, P. L. 1053, Section 1109, provides as follows:

> "Within thirty days after the entry of any final judgment, order, or decree of the Superior Court, any party

to the record, aggrieved thereby, may appeal therefrom to the Supreme Court, if the jurisdiction of the Superior Court is in issue, or if the case involves the construction or application of the Constitution of the United States or of any statute or treaty of the United States, or if the case involves the construction or application of the Constitution of Pennsylvania, or if the appeal to the Supreme Court be especially allowed by the Superior Court itself, or by any one justice of the Supreme Court. Such appeals shall be taken and prosecuted in the same manner, and with the same effect, as is provided in other cases of appeal from the Superior Court to the Supreme Court."

The other statute involved is the United States Statute known as the Federal Motor Carrier Act 1935, 49 U. S. C. A. 301 *et seq.* This statute gives authority to the Interstate Commerce Commission to regulate transportation of goods by motor vehicle engaged in interstate commerce.

Federal Questions Were Raised.

Your petitioners offered in evidence at the hearing before the Pennsylvania Pubic Utility Commission its Compliance Order from the Interstate Commerce Commission authorizing it to operate in the manner provided in said order.

The manner of petitioners' operations under said order between two points in Pennsylvania via Wheeling, West Virginia, as found by the court, is undisputed, and under the Federal Motor Carrier Act 1935, 49 U. S. C. A. 303, Section 203 (a) (10), such operations are interstate commerce subject to the jurisdiction of the Interstate Commerce Commission. See *Hanley* v. *Kansas City So. Ry. Co.*, 187 U. S. 617 (1903); *United States* v. *Erie R. Co.*, 160 Fed. 352 (1909).

The petition for allowance of an appeal presented to the Supreme Court of Pennsylvania set forth the Federal Statute and the Interstate Commerce Commission's control over petitioners' operations.

Questions Presented.

Where the Superior Court of the State of Pennsylvania enters a final judgment affirming an order of the Public Utility Commission and an appeal is presented to the Supreme Court of the State involving the application and construction of a Federal Statute, may the Supreme Court of Pennsylvania under the act of May 28, 1937, P. L. 1053, section 1109, refuse to hear an appeal presented to it?

Where a motor carrier transporting freight between points in one State through another State over the same routes and in the same trucks as traffic moving between points in different States and all under the authority and jurisdiction of the Interstate Commerce Commission and not in violation of any order of the State Commission, and when the freight between the points in the same State is a reasonable and necessary incident to interstate commerce, may the State declare that the carrier is operating as a subterfuge, and order said carrier to cease, and assess a penalty upon said carrier?

Reasons Relied On for Petition of Writ of Certiorari.

The petitioners were complying with the authority of the order of the Interstate Commerce Commission. That Commission had taken jurisdiction of the petitioners' operations prior to any claim of jurisdiction on the part of the Pennsylvania Public Utility Commission. Therefore, the Pennsylvania Public Utility Commission is interfering with interstate commerce, is depriving petitioners of their rights under the Federal Statute governing motor carriers, is in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, and will deprive the petitioners of the protection of the Fourteenth Amendment to the Constitution of the United States.

Furthermore, petitioners have been denied their right to have the case heard by the Supreme Court of Pennsylvania,

thus violating their rights of procedural due process as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Conclusion.

Wherefore, your petitioners pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Superior Court of Pennsylvania, requiring that court to certify the whole record of the case herein to this Court for its review and determination.

H. D. Ryan and
L. G. Howard,
Trading as Keystone Transfer Company,
Harold S. Shertz,
Counsel for Petitioners.